

QUINCY & GORHAM.

[To accompany bill H. R. No. 342.]

JANUARY 9, 1838.

Mr. CUSHMAN, from the Committee on Commerce, made the following

REPORT :

The Committee on Commerce, to which was referred the petition of Marius Quincy and William Gorham, report :

That, as to the statement of facts, the committee accord with the report of the Committee on Commerce, made to the Senate at the first session of the twenty-fourth Congress, which is as follows, viz :

"That the petitioners represent themselves to be owners of the brig Neptune, of Portland, State of Maine, which sailed for Eastport in August, 1832, and from thence to Philadelphia, and thence to Boston, with a crew of seven men and a boy. At Boston, when she presented the list of her crew, and demanded her discharge, the collector of that port declined granting it without the payment of tonnage duty, as two-thirds of her crew were not American citizens. The law requires that all vessels which are not manned with a crew, two-thirds of whom are American citizens, shall be liable to pay a tonnage duty of fifty cents a ton. The object of this law is to give encouragement to American seaman, but all ship owners have their option to comply with it or not.

"In this case there is no question that two-thirds of the crew of the Neptune were not American citizens. The facts are agreed, namely : that five of the seamen were American citizens, and two, with the boy, foreigners. The petitioners, therefore, do not contend that the duty which was paid was unlawfully demanded ; they, however, set up what they consider to be an equitable claim to have it refunded. It rests on their representation, that the boy was supposed by them to be a native American, whereas he was born in Ireland, and emigrated hither at the age of three or four years. They allege that he had no foreign accent, or any thing in his appearance which indicated his foreign nativity. In employing him they misjudged, as they aver, not doubting that he was an American. They also prove that he was suddenly engaged, at the moment when the vessel was about to sail, to take the place of another person who had failed to fulfil his contract."

From the above facts it appears to be very certain that the petitioners had incurred the forfeiture which was exacted of them by the collector, to whom, in such cases, no discretionary powers have been given by law. The collector, therefore, was right in making the demand, and insisting upon the payment, of said forfeiture. But, under such circumstances, ought the United States to retain this penalty ? The committee think not. Although the act of Congress under which this penalty was incurred "has been deemed very useful, and pro-

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motive of the great interests of the country," yet the committee cannot believe that it was the design of Congress to punish any of the citizens of the United States for mere unintentional errors or mistakes. Neither do they believe that it would be just so to do. Punishment should be inflicted only for intentional violations of law, or for gross, palpable negligence in not conforming to its requisitions. This case does not support either of the above propositions, but was a non-compliance with the requisitions of the statute of the United States entirely unintentional and accidental; therefore the committee report a bill for relief.

JANUARY 9, 1838.

Mr. CUSHMAN, from the Committee on Commerce, made the following

REPORT:

The Committee on Commerce, to which was referred the petition of Maria Quincy and William Graham, report:

That, as in the statement of facts, the committee record with the report of the Committee on Commerce, made to the Senate at the first session of the twenty-fourth Congress, which is as follows, viz:

"That the petitioners represent themselves to be owners of the brig Neptune, of Portland, State of Maine, which sailed for Eastport in August, 1837, and from thence to Philadelphia, and thence to Boston, with a crew of seven men and a boy. At Boston, when she presented the list of her crew, and demanded her discharge, the collector of that port declined granting it without the payment of tonnage duty, as two-thirds of her crew were not American citizens. The law requires that all vessels which are not manned with a crew, two-thirds of whom are American citizens, shall be liable to pay a tonnage duty of fifty cents a ton. The object of this law is to give encouragement to American seamen, but all ship owners have their option to comply with it or not.

"In this case there is no question that two-thirds of the crew of the Neptune were not American citizens. The facts are agreed, namely: that five of the seven were American citizens, and two, with the boy, foreigners. The petitioners, therefore, do not contend that the duty which was paid was unlawfully demanded; they, however, set up what they consider to be an equitable claim to have it refunded. It rests on their representation that the boy was supposed by them to be a native American, whereas he was born in Ireland, and emigrated hither at the age of three or four years. They allege that he had an foreign accent, or any thing in his appearance which indicated his foreign nativity. In employing him they mistook, as they aver, not doubting that he was an American. They also prove that he was suddenly engaged, at the moment when the vessel was about to sail, to take the place of another person who had failed to fulfil his contract."

From the above facts it appears to be very certain that the petitioners had incurred the forfeiture which was exacted of them by the collector, to whom, in such cases, no discretionary powers have been given by law. The collector, therefore, was right in making the demand, and insisting upon the payment of said forfeiture. But, under such circumstances, ought the United States to retain this penalty? The committee think not. Although the act of Congress under which this penalty was incurred has been deemed very useful, and pro-